

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 24TH JANUARY 2007 / 8TH MAGHA 1928

Crl.MC.No. 3408 of 2006()

ST.3273/2006 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA

PETITIONER: ACCUSED:

MUHAMMAD RIYAS,
SUB INSPECTOR OF POLICE, ANGAMALY POLICE STATION,
PRESENTLY WORKING AS S.I. OF POLICE,NORTH PARAVUR.

BY ADV. SRI.P.SHAIJAN JOSEPH

RESPONDENTS: COMPLAINANT:

1. VARGHESE, S/O. OUSEPH,
PALATHINGAL, KUNNAPPILLISSERY KARA,
PARAKKADAVU VILLAGE, ALUVA TALUK.
2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY ADV. SRI.T.N.HAREENDRAN
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 24/01/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

Crl.M.C.No.3408 of 2006

Dated this the 24th day of January 2007

O R D E R

The petitioner is a Sub Inspector of Police who faces allegations under Section 323 I.P.C. The proceedings have been initiated on the basis of a complaint lodged by the respondent/complainant. The sworn statement was recorded and the learned Magistrate who took cognizance under Section 323 I.P.C. The petitioner has now come to this court with the prayer that the proceedings against him may be quashed, cognizance having been taken against him ignoring the mandate of Section 197 Cr.P.C. This, in short, is the plea.

2. The allegations raised by the complainant show that the petitioner herein had assaulted him at the police station with no justifiable reason. The petitioner now contends that, as a matter of fact, there was no crime committed by the petitioner against the complainant and what really happened was a settlement of dispute between the complainant and his adversary before the petitioner at the police station. This is borne out by the petition register maintained in the police station in which the

complainant and his

Crl.M.C.No.3408/06 :2:

adversary had affixed their signature. This, in short, is the plea.

3. It is very surprising that this plea has not been specifically raised even in this Criminal Miscellaneous Case. That the complainant and his adversary had affixed their signatures in the petition register indicating a compromise between them is significantly not pleaded at all. With the help of an unauthenticated photocopy, which is placed for the perusal of this court in the course of hearing, such a contention not even pleaded at this stage, is sought to be raised. That contention cannot obviously be accepted.

4. The learned counsel for the petitioner submits that even if the said entry in the petition register were ignored, even on the allegations raised in the complaint, it must be seen that the petitioner was exercising his official duties which he is bound to discharge. It is contended that the alleged act punishable under Section 323 I.P.C must be held to be in the discharge of or in the purported discharge of the official duties of the petitioner.

5. It is true that under Section 197 Cr.P.C, sanction has

got to be obtained when the official concerned (falling within the purview of Section 197 Cr.P.C) is accused of any offence alleged to have been committed by him “while acting or purporting to act in the discharge of his official duty”. It is not enough, if the status of the indictee as the official offers or renders the excuse for the offence committed. It must be shown that the alleged offence was committed while acting or purporting to act in the discharge of his official duty. The allegations in the complaint cannot, at any rate, show that the petitioner was acting or purporting to act in the discharge of his official duty.

6. Of course, I am conscious of the conflict in interpretation of Section 197 Cr.P.C. If too wide an interpretation were accepted, the citizens' right against the erring official will become frustrated. On the contrary, if too narrow an interpretation is accepted the protection afforded by Section 197 Cr.P.C to the public official will become illusory. A court has to carefully consider the facts to decide whether sanction under Section 197 Cr.P.C is necessary in the facts and circumstances of the case. So reckoned, I find absolutely no circumstances at this stage to conclude that sanction under Section 197 Cr.P.C was necessary and want of such sanction is sufficient to persuade this court to invoke the powers under

Section 482 Cr.P.C now. This petition is, in these circumstances, dismissed holding that at the moment and with the available materials, cognizance taken cannot be held to be bad for want of sanction under Section 197 Cr.P.C. Needless to say, the petitioner shall be entitled in the course of the trial to advance all relevant evidence and advance all relevant contentions on the basis of the materials placed before the court including the contention that sanction under Section 197 Cr.P.C must have been taken in the matter.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006